

**Town of Bethany Beach  
Planning Commission Minutes  
March 17, 2007**

The Bethany Beach Planning Commission held a meeting on Saturday, March 17, 2007 in the Bethany Beach Town Hall, 214 Garfield Parkway, Bethany Beach, DE 19930.

The following members were present: Kathleen Mink, who presided, Lew Killmer, Donald Doyle and Lonny Moore. Fulton Loppatto requested and was excused from attending the meeting.

Also present: Councilman Tracy Mulligan, John Eckrich, Building Inspector, Seville Pettit, Administrative Secretary and interested members of the public.

The meeting was called to order at 9:03 a.m.

**OPENING OF MEETING**

***Approval of Agenda***

Ms. Mink made a request to omit D-2 *Status of 2008 Fiscal Budget Development* and D-3 *Town Council Workshops*, since this business has been taken care of previously. The amended agenda was unanimously approved.

***Discussion/ Approval of Planning Commission Minutes dated February 17, 2007***

Mr. Doyle made a motion to approve the minutes. The motion was seconded by Mr. Killmer and unanimously approved.

***Announcements/ Comments***

**Commercial Design Review Committee (CDRC) (Doyle)**

Mr. Doyle stated the Connor's Liquor store on Rt.26 plans for minor exterior remodeling were reviewed and approved on March 9, 2007. The present store will be divided into two stores, adding new glass doors. Mr. Killmer noted that during the review, the proposed new Signage ordinances were reviewed with the owner/applicant so that he could be informed of the proposed changes prior to his ordering or purchasing new signs or exterior illumination.

***Comments, Questions & Answers discussion for Planning Commission members***

There were no questions to discuss at this time.

**NEW BUSINESS**

***Discussion and possible vote on An Ordinance to Amend Section 245-61 ("C-1 Central Commercial District") of Bethany Beach Zoning Code by Specifying Miniature Golf Courses as permitted use.***

Ms. Mink stated that the Planning Commission makes every effort to minimize the opportunity for the interpretation of Chapters 200 and 245 of the Town Code. Within Chapter 245 – 61, those uses that are Permitted by Right can include the permitted uses conditions and limitations that must be followed. Ms. Mink advised the responsibility of the Planning Commission is to make suggestions and recommendations to the Town Council for its consideration and decision. The Planning Commission recommends and the Town Council decides.

Mr. Killmer noted the applicant Carol Schultze was attending the meeting. Homeowners in the vicinity of the proposed Miniature Golf course at the corner of Central Boulevard and Pennsylvania Avenue are challenging the Board of Adjustment's (BOA) recent approval that was granted to construct a miniature golf course. The basis of the challenge is that Miniature Golf is not specified as a Use by Special Exception in the Zoning Code, and that they disagree with the BoA's assessment of Miniature Golf being a Game of Skill, which is authorized as a Use by Special Exception. Technical problems arose with the appeal that may stop the construction of the miniature golf course.

Mr. Killmer continued by reading information received from Terrence Jaywork, Town Solicitor. Mr. Killmer stated that adding Miniature Golf as a "Permitted Use", with conditions and limitations to protect the rights of the business owners as well as the surrounding neighbors, should be considered by the Planning Commission. The Planning Commission chose the Permitted Uses for these reasons:

In January of 2007, the Board of Adjustments (BOA) approved as a Special Exception the construction of a miniature-golf course in the C-1 Zoning District (the corner of Central Boulevard and Pennsylvania Avenue). Miniature-golf is not itemized as a Use by Special Exception in the C-1 Commercial Zoning District (§245-62 A.), and it was the BOA's reasoned conclusion that a miniature-golf course was covered under the umbrella description "similar games of skill". This conclusion led directly to the project being approved.

Subsequent to the BOA's approval, two property owners in the vicinity of the proposed miniature-golf course hired legal counsel to appeal the ruling of the BOA. The foundation of the appeal is that the Town Code does not specifically provide for miniature-golf courses and that, in the plaintiffs' opinion, miniature-golf is not a game of skill. Their position is that the BOA erred in their findings and therefore the ruling of the BOA should be overturned.

Miniature-golf has been a part of the C-1 Downtown Commercial District for more than 20 years. With this in mind, it is the opinion of the Planning Commission that the term miniature-golf was inadvertently left out of the Zoning Code, and it is the responsibility of the Planning Commission to propose remedies to the Town Council that will rectify this oversight.

With the assistance of the Town Solicitor, on March 17, 2007, the Planning Commission reviewed two alternatives to remedy this oversight. The first alternative creates an

ordinance allowing miniature-golf courses as a Use by a Special Exception granted by the BOA (Attachment 1). The second alternative creates an ordinance which provides for Miniature-golf as a Permitted Use by Right. (Attachment 2).

When an application for a Special Exception is received and a hearing date is set, all properties within 200 feet of the site of the proposed project are notified by mail and the property is posted. At the hearing, the applicant presents his or her proposal before the BOA. The BOA can impose conditions – specific to the proposed project - to which the applicant must agree to comply in order for the proposal to be approved. Appeal of BOA rulings are made to Delaware State Courts.

Under the Permitted Use by Right alternative, for all commercial enterprises, the requirements for conditions and limitations are in place. There is no need for a formal review by the BOA, who may or may not impose conditions for approval. In addition, drawings for the proposed building of a new commercial structure or remodeling at an existing site (including miniature-golf courses) must be reviewed and approved by the Bethany Beach Commercial Design Review Committee (CDRC) prior to the issuance of a Building Permit. All CDRC reviews are properly advertised and open to the public. Any decision of the CDRC can be appealed to the Town Council.

With a view to making the recognition and regulation of a miniature-golf business equal to that of other seasonal businesses in Bethany Beach, it is the Planning Commission's view that the Town Council give strong consideration to the proposed Permitted Use amendment.

Mr. Doyle made a motion to remove #4 from the Limitations in the proposed amendment which states *"No miniature golf course shall be constructed or operated unless appropriately planted, along each property line not abutting a public street, with vegetation, which will grow to such height and density as to create a natural buffer to muffle sound and light emanating from the miniature golf course"*. The motion was seconded by Mr. Moore and unanimously approved. Mr. Killmer abstained from voting because this matter will come before the Town Council, for which is the representative on the Planning Commission.

The Planning Commission made the following recommendations:

J. Miniature golf course subject to the following conditions and limitations:

(1) No miniature golf course shall be open for business between the hours of 12:01 a.m. and 10:00 a.m.

(2) The Building Inspector was to advise a distance and decibel level that was used in other communities.

(3) No miniature golf course shall be constructed or operated unless solid walls or fences, not more than six feet high are erected along each property line not abutting a public street.

(4) No miniature golf course shall be constructed or operated unless all artificial lighting meets the conditions that are outlined in the Illumination Section of the Bethany Beach Commercial Districts Design Guidelines.

(5) No miniature golf course shall be constructed or operated unless consistent with the Bethany Beach Commercial Districts Design Guidelines.

Mr. Moore made a suggestion to consider the measurement of noise (sound) be decibel levels, and the other Commissioners agreed. Mr. Moore made a motion to recommend to Town Council the proposed update to 245-61 as amended. The motion was seconded by Mr. Doyle and unanimously approved. Because the proposal will come before the Town Council for consideration, and he is a member of Town Council, Mr. Killmer abstained.

***Discussion and possible vote on An Ordinance to Amend Section 245-61 (“C-1 Central Commercial District”) of the Bethany Beach Zoning Code by Specifying Miniature Golf Courses as a Use Permitted as a Special Exception by the Board of Adjustment.***

Ms. Mink stated there are condition and limitations set by the Board of Adjustment at hearings and the special exceptions take extra steps.

**2007 COMPREHENSIVE PLAN and LOOKING AHEAD**

***Finalize discussion/ decisions on short and long-term planning issues (Exhibit 2)***

The Planning Commission members continued to develop a set of issues addressing short and long-term projects for the Planning Commission to address and resolve.

***Assign “lead” Planning Commissioner for each issue***

Ms. Mink assigned each issue to a Planning Commissioner to be addressed and resolved.

**PLANNING COMMISSION’S MEMO TO SUSSEX COUNTY COUNCIL RE: SUSSEX COUNTY COMPREHENSIVE PLAN UPDATE**

***Content (Exhibit 3)***

The Planning Commission members reviewed and approved the final draft of a proposed letter to be sent to the Sussex County Commissioners addressing concerns that need to be considered and resolved within the update of the Sussex County Comprehensive Plan.

***Distribution (Exhibit 4)***

The Planning Commission members reviewed and approved the proposed list of recipients of the above-mentioned letter.

It was suggested that the Town Council be asked if it wished to be a signatory on the letter as well as the Planning Commission. Ms. Mink stated she would communicate this suggestion to the Town Council for its consideration and decision.

**PUBLIC COMMENT/ QUESTIONS**

Ms. Carol Schultze thanked the Planning Commission for the depth of discussion regarding Miniature Golf courses. She also stated the importance of interpreting ordinances.

**ADJOURN**

The meeting adjourned at 11:50 a.m.

Respectfully Submitted,

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Seville Pettit  
Administrative Secretary

March 17, 2007

### Action Items

1. Mr. Eckrich to contact Planning Commission members via email Regarding what he learns from other Towns on how they measure noise levels, in particular what decibel levels are used,
2. Ms. Mink to request Town Council's consideration of co-signing the letter regarding the update to the Sussex County Comprehensive Plan. Upon Council's decision Ms. Mink will make appropriate revision to the letter and then arrange for its transmittal.